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**PUBLIC UTILITIES COMMISSION**

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TO PARTIES OF RECORD IN RULEMAKING (R.) 06-02-013 AND R.06-04-010

This is the proposed decision of the Administrative Law Judge. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Malcolm at [kim@cpuc.ca.gov](mailto:kim@cpuc.ca.gov) and the assigned Commissioner. The current service lists for these proceedings are available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ ANGELA K. MINKIN  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:eap  
Attachment

Decision **PROPOSED DECISION OF THE ALJ** (Mailed 5/22/2007)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 06-02-013  
(Filed February 16, 2006)

Order Instituting Rulemaking to Examine the Commission's post-2005 Energy Efficiency Policies, Programs, Evaluation, Measurement and Verification, and Related Issues.

Rulemaking 06-04-010  
(Filed April 13, 2006)

**OPINION CLARIFYING REQUIREMENTS FOR AWARDS OF COMPENSATION TO INTERVENORS FOR THEIR SUBSTANTIAL CONTRIBUTIONS TO PROCUREMENT REVIEW GROUPS, PEER REVIEW GROUPS AND PUBLIC ADVISORY GROUPS**

This decision, entered in both proceedings, provides procedural guidance to parties that seek intervenor compensation for their work in Procurement Review Groups (PRGs), Peer Review Groups and Public Advisory Groups (collectively, the two latter groups are referred to as "PAGs") for procurement and energy efficiency portfolio development of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). We specify the type of information we need in requests for compensation to satisfy the law and assure the effective use of ratepayer funds.

**1. Background**

Rulemaking (R.) 06-02-013 reviews the long-term energy procurement strategies and plans for PG&E, SCE and SDG&E. In a predecessor proceeding,

we established PRGs to facilitate the utilities' ability to meet their service obligations to customers immediately after the electricity crisis. The expectation was that the PRG process, although strictly advisory, would allow parties in upcoming utility filings to identify potentially contentious issues in advance and to work on a solution before the utilities filed their applications. In the continuing procurement process, the PRG members serve as peer reviewers and work with the utilities as the utilities design and implement their procurement plans. Members consist of staff from the Commission's Energy Division and the Division of Ratepayer Advocates, as well as other consumer and ratepayer groups.

The Commission expected the PRG process to provide an important forum for identifying opportunities and resolving controversies related to utility procurement strategies. Accordingly, Decision (D.) 02-08-071 found that intervenors participating in the PRGs may be compensated for their work. More recently, the Commission established similar forums for considering the development of utility energy efficiency portfolios. D.05-01-055 set up PAGs and also found that contributions to energy efficiency PAGs should be eligible for compensation.

The Commission has granted compensation to PRG and PAG intervenors in several subsequent decisions, and several requests for compensation are pending that seek compensation for PRG and PAG work. Some requests for compensation for work in PRGs and PAGs have not provided the type of information we need to assure ratepayers, who assume the costs of the intervenor compensation program, receive the benefits of the intervenor's participation. Recognizing that past orders have not articulated the standard of review for such requests, this decision provides PRG and PAG participants with

some guidance about the types of information the Commission needs in requests for intervenor compensation in order to protect ratepayers and comply with existing statutes.

The Commission continues to value the PRG and PAG process. We address the matters herein with that in mind and with the hope of encouraging continued effective and meaningful participation in PRGs and PAGs.

## **2. Requirements for Awards of Compensation for Participation in PRGs and PAGs**

D.02-10-062 determined that an intervenor's participation in procurement PRGs should be eligible for compensation:

Participation in the procurement review group makes a significant contribution to effective implementation of this decision and parties eligible to receive intervenor compensation awards in this proceeding should be eligible to seek compensation for their work in these groups and in the on-going review of procurement advice letters and expedited applications.

D.05-01-055 made a similar finding in the case of energy efficiency Peer Review Groups and Public Advisory Groups:

Participation in the PAGs, including the PRGs described in this decision, makes a significant contribution to effective implementation of this decision and parties eligible to receive intervenor participation awards in this proceeding should be eligible to seek compensation for their work in the groups.

In each case, the Commission directed that PRG and PAG members be appointed, including some who we understood would be eligible for intervenor compensation. We explicitly provided the opportunity for members to be compensated in order to encourage the participation of groups that might not otherwise be able to assume the costs of participation and to suggest the value

we place on the PRG and PAG process. D.05-01-055 stated our intent to “encourage collaboration among stakeholders.”

We continue to place a high value on the participation of intervenor groups in the PRGs and PAGs. In order to compensate these intervenor groups, we must comply with existing law. Specifically, Public Utilities Code §§ 1801 - 1812<sup>1</sup> establishes the criteria under which an intervenor may be compensated for participating in Commission proceedings, compensation which is funded in utility rates. Most germane to our order today are the following requirements:

The intervenor must demonstrate a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (Pub. Util. Code §§ 1802(i) & 1803(a).)

The customer’s participation must not duplicate the presentations of other parties although it may materially supplement, complement, or contribute to the presentation of another party. (Pub. Util. Code §§ 1801.3(f) & 1802.5.)

The statute provides the Commission with wide latitude on how to implement the provisions of Sections 1801-1812 and the Commission has interpreted the statute liberally to encourage participation in its proceedings. The Commission has issued literally hundreds of orders granting intervenor compensation over the years. Some are routine. Others address compensation policies and practices generally and the treatment of unique circumstances. Our decisions have evolved and continue to evolve according to the information needs of the Commission, the types of forums we find best suited to decision-making and the interests of ratepayers and those who represent them. In all

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<sup>1</sup> All statutory references herein are to the Public Utilities Code unless otherwise stated.

cases, we have required intervenors to provide enough information to satisfy us that they have made a substantial contribution, and that their work does more than duplicate the work of others. Generally, these and other elements of our decisions assure that the amount we award an intervenor is reasonable on behalf of ratepayers who assume the related costs.

PRGs, PAGs and other non-traditional forums, such as settlements, present particular challenges for intervenors and the Commission in the context of intervenor compensation. Some information or negotiations may be confidential. Some of the work undertaken in collaborative processes may by its nature assure that activities, if not analysis and ideas, are duplicative of the work of others. Administrative Law Judges (ALJs) do not oversee this work directly and therefore cannot make a first-hand assessment of an intervenor's effectiveness and ultimate contributions to a Commission decision. In spite of these challenges, we have encouraged such forums and we have sought to provide compensation to intervenors who participate in these groups. This is certainly true of our treatment of PRG and PAG work so far and will continue to be the case.

In order to promote the efficient and effective review of intervenor compensation requests that involve PRGs and PAGs, and on behalf of the ratepayers who fund such compensation, we provide some additional guidance on the type of information we may need in requests for compensation involving PRG and PAG work.

As a preliminary matter, we must apply the provisions of the statute. Accordingly, compensation requests must include enough information for the Commission to make the findings required by Sections 1801-1812. That is, the intervenor must demonstrate a substantial contribution to a Commission

decision and describe how that contribution did not duplicate the contributions of others.

For example, the intervenor should explain the types of programs, policies, practices or documents reviewed in connection with its PRG or PAG work and how that work contributed to an outcome that benefited ratepayers. The intervenor should also address how its work added value to the PRG or PAG process because of a unique analysis, perspective or work product or because of specific expertise or skills of the intervenor. The request must include more than timesheets that provide information about activities.

Some intervenor participation in PRGs and PAGs may be duplicative by necessity. We understand that many parties may attend the same meetings or review the same documents. Those activities would qualify for compensation as long as the intervenor's contributions are adequately described and distinguished from those of others. The intervenor should also demonstrate reasonable collaboration with other PRG or PAG members to minimize duplication of effort. In order to effectively evaluate duplication, we are interested in knowing the date, duration, and location of the PRG or PAG meeting for which compensation is requested and whether the intervenor attended in person or participated telephonically.

Compensation requests need not publicly disclose confidential information. An intervenor that relies on such information may include it in the request for compensation by filing the information with a motion to accept the request under seal.

We will not compensate work that might be considered staff work, that is, work that is normally conducted under the direction of a Commission or utility manager, involves implementing the details of a program according to that

manager's discretion and does not involve advocacy on behalf of ratepayers. Ratepayers already pay for the costs of such work, whether conducted by Commission staff or utility staff.

Requests for compensation should also refer to the contributions made to a specific decision. While the intervenor compensation program has traditionally compensated effective participation in proceedings that culminate with the issuance of a formal decision, in some cases, PRG or PAG work will not result in a formal decision of the full Commission. Therefore, we interpret the related provision of the statute liberally to permit us to award compensation where an intervenor contributes to any Commission decision, including one that provides guidance for subsequent PRG or PAG work or a decision that is made by the Commission's Energy Division or by the assigned ALJ where that decision is made in conformance with a formal Commission decision. We here interpret the term "Commission decision" broadly in recognition that intervenor participation in an advisory group may be as effective and meaningful in the service of ratepayer interests as it would be in a more formal proceeding.

Hopefully, our guidance here clarifies any uncertainties faced by intervenors or program administrators in implementing the compensation program as it regards PRGs and PAGs. We welcome the parties' continued work in the PRGs and PAGs and continue to believe this work is both essential and eligible for compensation, as we discuss here.

### **3. Comment on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_ and reply comments were filed on \_\_\_\_\_.

#### **4. Assignment of Proceeding**

President Michael R. Peevey is the assigned Commissioner and Carol Brown and David Fukutome are the assigned ALJs in R.06-02-013. Dian M. Grueneich is the assigned Commissioner and Meg Gottstein, Steven Weissman, and Kim Malcolm are the assigned ALJs in R.06-04-010.

#### **Findings of Fact**

1. The Commission has found that intervenors who participate in PRGs and PAGs may qualify for intervenor compensation for related work.
2. The intervenors who seek compensation for their work in PRGs and PAGs would benefit from guidance on the types of information their compensation requests should include.

#### **Conclusions of Law**

1. Pub. Util. Code §§ 1801-1812 provides considerable latitude to the Commission in the implementation of its provisions but does impose certain standards that govern awards of intervenor compensation.
2. The guidance provided herein to parties who seek intervenor compensation for participation in PRGs and PAGs is reasonable and consistent with the law.

#### **O R D E R**

##### **IT IS ORDERED** that:

1. The Commission hereby provides guidance to intervenors seeking compensation under Sections 1801-1812 of the Public Utilities Code for participation in Procurement Review Groups or Peer Review Groups and Public Advisory Groups.

2. Parties shall serve the service list for Rulemaking (R.) 06-02-013 and R.06-04-010 when filing comments and reply comments. These proceedings are not formerly consolidated.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## **INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed Notice of Availability to be served upon the service lists to these proceedings by U.S. mail. The service lists I will use to serve the copy of the filed Notice of Availability is current as of today's date.

Dated May 22, 2007, at San Francisco, California.

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\_\_\_\_\_  
/s/ ERLINDA PULMANO  
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\*\*\*\*\* SERVICE LIST \*\*\*\*\*  
**Last Update on 16-MAY-2007 by: JVG**  
**R0602013 LIST**

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